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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,367	01/04/2006	Takeshi Koda	8048-1136	1303
<small>465 7590 09/24/2009</small> YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER HUBER, PAUL W	
			ART UNIT 2627	PAPER NUMBER
			MAIL DATE 09/24/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,367

Applicant(s)

KODA ET AL.

Examiner

Paul Huber

Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Art Unit: 2627

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 101 that form that basis for the rejections under this section made in this Office action:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16 and 17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are drawn to a "program" *per se* as recited in the preamble and as such is non-statutory subject matter. See MPEP § 2106.IV.B.1.a. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is indefinite because it is not understood how an address (particular point on the recording medium) can bridge over a plurality of areas as claimed. An address point cannot bridge or span across the medium. It merely identifies a particular location point on the medium.

Art Unit: 2627

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Park (US 2005/0025003).

Regarding claims 1, 3, 4, 6-8, 10, 11 and 13-18, Park discloses a recording and reproducing apparatus and method for recording and reproducing record data onto/from an information recording medium, an information recording medium, the information recording medium (see figures 2 and 5), comprising: a data area to record therein record data; a spare area (ISAO, for example) to record therein evacuation data which is record data to be recorded at a position of a defect in the data area or which is record data recorded at the position (see line paragraph 0056, which teaches user (evacuation) data intended for or written in a cluster having a defect which is then written to an available area of the spare area); and a temporary defect management area (TDMA) to temporarily record therein defect management information including at least an evacuation source address (first PSN of defective cluster) which is an address of the position and an evacuation destination address (first PSN of replacement cluster) which is an address of a recording position of the evacuation data (see figure 8). The evacuation destination address is specified by an address offset from a predetermined point (e.g., start point) in the spare area. Since the start point of the spare area begins with the start address of the physical address of the spare area, e.g., physical address of "a", the evacuation destination address (PSN of replacement cluster) is specified by a physical address "b" which is advanced by a predetermined amount from the physical address "a". Accordingly, Park teaches that the evacuation destination address is specified by a first offset address (predetermined advanced amount) based on one predetermined point (i.e., start point of spare area) in the spare area as claimed.

Regarding claims 2, 9, 12, a control information recording area (Lead-In Area) records therein information for controlling at least one of operation of recording and reading in the data area. The control information recording area includes a definite defect management area (DMA) as claimed. See figure 2.

Regarding claim 5, the evacuation source address (PSN of defective cluster) is specified by a second physical address "c" which is advanced by a predetermined amount from another physical address "d" (e.g., start

Art Unit: 2627

point of the user area). Thus, Park teaches that the evacuation source address is specified by a second offset address (predetermined advanced amount) based on another predetermined point (i.e., start point of user data) in the data area as claimed.

Any inquiry concerning this communication should be directed to Paul Huber at telephone number 571-272-7588.

/Paul Huber/
Primary Examiner, Art Unit 2627

pwh
September 22, 2009